

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

**U.S. Bank Trust, N.A., as Trustee for LSF11
Master Participation Trust**

Plaintiff

vs.

**Daniel Bosse, Donna Bosse, JPMorgan
Chase Bank, National Association f/k/a
The Chase Manhattan Bank as Indenture
Trustee**

Defendants

**Maine Revenue Services
Norstate Federal Credit Union**

Parties-In-Interest

CIVIL ACTION NO:

COMPLAINT

**RE:
129 Fraser Avenue, Madawaska, ME 04756**

**Mortgage:
December 13, 2005
Book 1480, Page 314**

NOW COMES the Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF11 Master Participation Trust, by and through its attorneys, Doonan, Graves & Longoria, LLC, and hereby complains against the Defendants, Daniel Bosse and Donna Bosse, as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant 28 U.S.C. § 1332(a)(1) (Diversity) because the Plaintiff and Defendants are citizens of different states and the matter in controversy exceeds the sum or value of seventy-five thousand and 00/100 (\$75,000.00) dollars, exclusive of interest and costs. Any Court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought under 28 U.S.C. § 2201.
2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because the object of this litigation is a Note executed under seal currently owned and held by U.S. Bank

Trust, N.A., as Trustee for LSF11 Master Participation Trust, in which the Defendants, Daniel Bosse and Donna Bosse, are the obligor and the total amount owed under the terms of the Note is Seventy-Seven Thousand Nine Hundred Eighty-Seven and 76/100 (\$77,987.76) Dollars, plus attorney fees and costs associated with the instant action; thus, the amount in controversy exceeds the jurisdictional threshold of seventy-five thousand (\$75,000.00) dollars.

3. Venue is properly exercised pursuant to 28 U.S.C. §1391(b)(2) insofar as all or a substantial portion of the events that give rise to the Plaintiff's claims transpired in Maine and the property is located in Maine.

PARTIES

4. U.S. Bank Trust, N.A., as Trustee for LSF11 Master Participation Trust is a corporation with its principal place of business located at 425 Walnut Street, Cincinnati, OH 45205.
5. The Defendant, Daniel Bosse, is a resident of Presque Isle, County of Aroostook and State of Maine.
6. The Defendant, Donna Bosse, is a resident of Presque Isle, County of Aroostook and State of Maine.
7. The Defendant, JPMorgan Chase Bank, National Association f/k/a The Chase Manhattan Bank as Indenture Trustee, is located at 111 Polaris Parkway, Columbus, OH 43240.
8. The Party-in-Interest, Maine Revenue Services, is located at c/o Kevin J. Crosman, Esq., Assistant Attorney General, 6 State House Station, Augusta, ME 04333.
9. The Party-in-Interest, Norstate Federal Credit Union, is located at 78 Fox Street, Madawaska, ME 04756.

FACTS

10. On October 24, 1997, by virtue of a Warranty Deed from Michael C. Morneault and Sharon Vender-Morneault, which is recorded in the Aroostook County Registry of Deeds - Northern in **Book 1090, Page 93**, the property situated at 129 Fraser Avenue, County of Aroostook, and State of Maine, was conveyed to the Defendants, Daniel Bosse and Donna Bosse, being more particularly described by the attached legal description. *See* Exhibit A (a true and correct copy of the legal description is attached hereto and incorporated herein).
11. On December 13, 2005, the Defendant, Daniel Bosse, executed and delivered to Countrywide Home Loans, Inc. a certain Note in the amount of \$69,300.00. Defendants, Daniel Bosse and Donna Bosse's personal liability is limited and/or extinguished by the Chapter 7 bankruptcy filed which resulted in a bankruptcy discharge. *See* Exhibit B (a true and correct copy of the Note is attached hereto and incorporated herein).
12. To secure said Note, on December 13, 2005, the Defendants, Daniel Bosse and Donna Bosse, executed a Mortgage Deed in favor of Mortgage Electronic Registration Systems, Inc. as nominee for Countrywide Home Loans, Inc., securing the property located at 129 Fraser Avenue, Madawaska, ME 04756 which Mortgage Deed is recorded in the Aroostook County Registry of Deeds - Northern in **Book 1480, Page 314**. *See* Exhibit C (a true and correct copy of the Mortgage is attached hereto and incorporated herein).
13. The Mortgage was then assigned to Federal National Mortgage Association ("Fannie Mae") by virtue of an Assignment of Mortgage dated March 10, 2017 and recorded in the Aroostook County Registry of Deeds - Northern in **Book 1970, Page 172**. *See* Exhibit D (a true and correct copy of the Assignment of Mortgage is attached hereto and incorporated herein).

14. The Mortgage was further assigned to Federal National Mortgage Association by virtue of a Quitclaim Assignment dated April 3, 2018 and recorded in the Aroostook County Registry of Deeds - Northern in **Book 2011, Page 242**. *See* Exhibit E (a true and correct copy of the Quitclaim Assignment is attached hereto and incorporated herein).
15. The Mortgage was then assigned to U.S. Bank Trust, N.A., as Trustee for LSF11 Master Participation Trust by virtue of an Assignment of Mortgage dated February 19, 2019 and recorded in the Aroostook County Registry of Deeds - Northern in **Book 2048, Page 246** (here also with recorded Power of Attorney from Federal National Mortgage Association to Nationwide Title Clearing, Inc.). *See* Exhibit F (a true and correct copy of the Assignment of Mortgage is attached hereto and incorporated herein).
16. On October 11, 2010, the Defendant, Daniel Bosse, executed a Home Affordable Modification Agreement which increased the principal amount of the Note to \$68,983.86 (herein after referred to as the “2010 Loan Modification”). *See* Exhibit G (a true and correct copy of the 2010 Loan Modification is attached hereto and incorporated herein)
17. On July 12, 2012, the Defendant, Daniel Bosse, executed a Home Affordable Modification Agreement which increased the principal amount of the Note to \$68,736.09 (herein after referred to as the “2012 Loan Modification”). *See* Exhibit H (a true and correct copy of the 2012 Loan Modification is attached hereto and incorporated herein)
18. On August 25, 2015, the Defendant, Daniel Bosse, executed a Home Affordable Modification Agreement which increased the principal amount of the Note to \$68,402.47 (herein after referred to as the “2015 Loan Modification”). *See* Exhibit I (a true and correct copy of the 2015 Loan Modification is attached hereto and incorporated herein)
19. On March 14, 2019, the Defendants, Daniel Bosse and Donna Bosse, were sent a Notice of Mortgagor's Right to Cure, as evidenced by the Certificate of Mailing (herein after referred

to as the “Demand Letter”). *See* Exhibit J (a true and correct copy of the Demand Letter is attached hereto and incorporated herein).

20. The Demand Letter informed the Defendants, Daniel Bosse and Donna Bosse, of the payment due date, the total amount necessary to cure the default, and the deadline by which the default must be cured, which was thirty-five (35) days from receipt of the Demand Letter. *See* Exhibit J.
21. The Defendants, Daniel Bosse and Donna Bosse, failed to cure the default prior to the expiration of the Demand Letter.
22. The Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF11 Master Participation Trust, is the present holder of the Note pursuant to endorsement by the previous holder (if applicable), payment of value and physical possession of the Note in conformity with 11 M.R.S. § 3-1201, et seq., 10 M.R.S. § 9416, and *Simansky v. Clark*, 147 A. 205, 128 Me. 280 (1929).
23. The Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF11 Master Participation Trust, is the lawful holder and owner of the Note and Mortgage.
24. The Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF11 Master Participation Trust, hereby certifies that all steps mandated by law to provide notice to the mortgagor pursuant to 14 M.R.S.A. § 6111 were strictly performed.
25. JPMorgan Chase Bank, National Association is a Defendant pursuant to a Mortgage to Community Bank of Northern Virginia in the amount of \$27,000.00 dated May 17, 1999 and recorded in the Aroostook County Registry of Deeds – Northern in **Book 1168, Page 131** against property incorrectly notated as mailing address 38 15th Avenue, Madawaska, but correctly described as Map 6, Lot 274. The Mortgage was assigned to The Chase Manhattan Bank as Indenture Trustee by virtue of an Assignment of Mortgage recorded on May 18,

2000 in the aforementioned Registry of Deeds in **Book 1208, Page 349**, which, upon information and belief, has been paid in full and should have been discharged.

26. Maine Revenue Services is a Party-in-Interest pursuant to a Notice of State Lien in the amount of \$260,723.43 dated July 22, 2015, and recorded in the Aroostook County Registry of Deeds - Northern in **Book 1901, Page 39** and is in second position behind Plaintiff's Mortgage.

27. Norstate Federal Credit Union is a Party-in-Interest pursuant to a Writ of Execution in the amount of \$10,233.55 dated April 21, 2016, and recorded in the Aroostook County Registry of Deeds - Northern in **Book 1930, Page 283** and is in third position behind Plaintiff's Mortgage.

28. The total debt owed under the Note and Mortgage as of May 27, 2019 is Seventy-Seven Thousand Nine Hundred Eighty-Seven and 76/100 (\$77,987.76) Dollars, which includes:

Description	Amount
Principal Balance	\$66,879.80
Interest	\$4,564.62
Escrow/Impound Required	\$4,412.84
Late Fees	\$72.80
Total Advances	\$2,151.08
Funds to be Credited	\$-93.38
Grand Total	\$77,987.76

29. Upon information and belief, the Defendants, Daniel Bosse and Donna Bosse, are presently in possession of the subject property originally secured by the Mortgage.

COUNT I – FORECLOSURE

30. The Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF11 Master Participation Trust, repeats and re-alleges paragraphs 1 through 29 as if fully set forth herein.

31. This is an action for foreclosure respecting a real estate related Mortgage and title located at 129 Fraser Avenue, Madawaska, County of Aroostook, and State of Maine. *See* Exhibit A.
32. The Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF11 Master Participation Trust, is the holder of the Note referenced in Paragraph 11 pursuant to endorsement by the previous holder (if applicable) and physical possession of the aforesaid Note in conformity with Title 11, section 3-1201, et seq. of the Maine Revised Statutes and *Simansky v. Clark*, 147 A. 205, 128 Me. 280 (1929). As such, Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF11 Master Participation Trust, has the right to foreclose upon the subject property.
33. The Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF11 Master Participation Trust, is the current owner and investor of the aforesaid Mortgage and Note.
34. The Defendants, Daniel Bosse and Donna Bosse, are presently in default on said Mortgage and Note, having failed to make the monthly payment due November 1, 2017, and all subsequent payments, and, therefore, have breached the condition of the aforesaid Mortgage and Note.
35. The total debt owed under the Note and Mortgage as of May 27, 2019 is Seventy-Seven Thousand Nine Hundred Eighty-Seven and 76/100 (\$77,987.76) Dollars, which includes:

Description	Amount
Principal Balance	\$66,879.80
Interest	\$4,564.62
Escrow/Impound Required	\$4,412.84
Late Fees	\$72.80
Total Advances	\$2,151.08
Funds to be Credited	\$-93.38
Grand Total	\$77,987.76

36. The record established through the Aroostook County Registry of Deeds - Northern indicates that there are no public utility easements recorded subsequent to the Mortgage and prior to the commencement of these proceedings affecting the mortgaged premises at issue herein.
37. By virtue of the Defendants' breach of condition, the Plaintiff hereby demands a foreclosure on said real estate, as affected by Defendants, Daniel Bosse and Donna Bosse's discharge in bankruptcy and, accordingly, this action does not seek any personal liability on the part of the Defendants, Daniel Bosse and Donna Bosse, but only seeks in rem judgment against the property.
38. Notice in conformity with 14 M.R.S.A. §6111 was sent to the Defendants, Daniel Bosse and Donna Bosse, on March 14, 2019, evidenced by the Certificate of Mailing. *See* Exhibit J.
39. The Defendants, Daniel Bosse and Donna Bosse, are not in the Military as evidenced by the attached Exhibit K.
40. If you are in bankruptcy or received a bankruptcy discharge of this debt, this is not an attempt to collect the debt against you personally, but is notice of a possible enforcement of the lien against the collateral property.

COUNT II – EQUITABLE MORTGAGE

41. The Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF11 Master Participation Trust, repeats and re-alleges paragraphs 1 through 40 as if fully set forth herein.
42. The intent of the Defendants, Daniel Bosse and Donna Bosse, and the original lender, Countrywide Home Loans, Inc., on December 13, 2005, was to create a mortgage on the property, commonly known as and numbered as 129 Fraser Avenue, Madawaska, ME 04756.
43. This intent is shown by the execution of a Promissory Note dated December 13,

2005 to Countrywide Home Loans, Inc. in the amount of \$69,300.00.

44. The value given at the time of the transaction was \$69,300.00, which was significantly below the property's value at that time, clearly indicating that it was the intent of the Defendants, Daniel Bosse and Donna Bosse, and Countrywide Home Loans, Inc. on the date of the transaction, December 13, 2005, that a mortgage be granted on the subject property.
45. The aforesaid Promissory Note, specifically references 129 Fraser Avenue, Madawaska, ME 04756 as the "Property Address."
46. In addition to the aforesaid Promissory Note, Defendants, Daniel Bosse and Donna Bosse, also executed a Mortgage December 13, 2005, which referenced the same property address of 129 Fraser Avenue, Madawaska, ME 04756 that was referenced on the aforesaid Promissory Note.
47. The aforesaid Mortgage is arguably unenforceable under current Maine Law pursuant to the *Greenleaf* decision, et al. See *Bank of America, N.A. v. Greenleaf*, 2014 ME 89, 96 A.3d 700 (Me. 2014); *Federal National Mortgage Association v. Deschaine*, 2017 ME 190, 170 A.3d 230 (Me. 2017); *Pushard v. Bank of America, N.A.*, 175 A.3d 103, 2017 ME 230 (Me. 2017).
48. This defect is not related to the original execution of the documents, nor the intent of the Defendants, Daniel Bosse and Donna Bosse, and Countrywide Home Loans, Inc., but is due to the chain of title for the aforesaid mortgage under *Greenleaf* and 33 M.R.S. § 508.
49. The issue of an equitable mortgage (or other equitable remedies) is not addressed by *Greenleaf*, or its progeny; See *Deschaine*, Fn. 2, Fn 4; *Pushard* Fn 14.
50. It was the intent of the Defendants, Daniel Bosse and Donna Bosse, and Countrywide Home Loans, Inc. at the time of the transaction, as to the execution of the subject document that is controlling as to the Court's interpretation of the imposition of an equitable mortgage.

51. The Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF11 Master Participation Trust, is the owner and holder of the subject Promissory Note.
52. The Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF11 Master Participation Trust, is the owner of the equitable interest in the aforesaid Mortgage but may arguably not be the record owner of said Mortgage under the *Greenleaf* decision.
53. Equity requires that “what ought to have been done has been done.” *See, Smith v. Diplock*, 127 Me. 452, 144 A.383, 386 (Me. 1929).
54. When it is the intent of the parties, at the time of the transaction, that there be a mortgage “[t]he real intent governs”. *See, Stinchfield v. Milliken*, 71 Me. 567, 570 (1880).
55. The agreement, as memorialized in the various documents referenced herein, constitutes an equitable mortgage.
56. For justice to be served, and under the facts and circumstances of this matter, the Court should, and must, impose an equitable mortgage upon the property. Defendants, Daniel Bosse’s and Donna Bosse’s, personal liability is limited and/or extinguished by the Chapter 7 bankruptcy filed which resulted in a bankruptcy discharge.
57. The Court’s imposition of an equitable mortgage should be under, and pursuant to the statutory terms of applicable Maine Law, including, but not limited to, the rights of redemption, etc. *See, Seaman v. Seaman*, 477 A2d 734 (Me.1984).

PRAYERS FOR RELIEF

WHEREFORE, the Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF11 Master Participation Trust, prays this Honorable Court:

- a) Issue a judgment of foreclosure in conformity with Title 14 § 6322;

- b) Grant possession to the Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF11 Master Participation Trust, upon the expiration of the period of redemption;
- c) Impose and enforce an equitable mortgage upon the subject property commonly known as and numbered 129 Fraser Avenue, Madawaska, ME 04756 for the benefit of the Plaintiff.
- d) Impose the applicable time periods for redemption, etc. as reflected in 14 M.R.S.A. § 6322;
- e) Find that while the Defendants in this matter, Daniel Bosse and Donna Bosse, due to their bankruptcy discharge, have no personal liability in this matter, a Judgment in this matter can be imposed in rem against the property commonly known as and numbered as 129 Fraser Avenue, Madawaska, ME 04756;
- f) Order the discharge of the Mortgage to Community Bank of Northern Virginia in the amount of \$27,000.00 dated May 17, 1999 and recorded in the Aroostook County Registry of Deeds – Northern in **Book 1168, Page 131** against property incorrectly notated as mailing address 38 15th Avenue, Madawaska, but correctly described as Map 6, Lot 274.
- g) For such other and further relief as this Honorable Court deems just and equitable.

Respectfully Submitted,
U.S. Bank Trust, N.A., as Trustee for LSF11
Master Participation Trust,
By its attorneys,

Dated: May 24, 2019

/s/ John A. Doonan, Esq.
/s/ Reneau J. Longoria, Esq.
John A. Doonan, Esq., Bar No. 3250
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